ILE COPY

Office-Supreme Court, U.S.
FILED
FEB 11 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 415

DAVID A. GOLDNER,

Petitioner

—against—

EDWARD S. SILVER, District Attorney, Kings County, State of New York,

Respondent

APPLICATION FOR REHEARING FOR A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

DAVID A. GOLDNER,
Pro Se
6 The Hemlocks
Roslyn Estates, N.Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 415

DAVID A. GOLDNER,

Petitioner

—against—

EDWARD S. SILVER, District Attorney, Kings County, State of New York,

Respondent

APPLICATION FOR REHEARING FOR A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The within application is respectfully submitted by the petitioner, pro se, for a rehearing of an application praying that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, the original petition for said writ having been denied by this Court.

Your petitioner has exhausted all means at his disposal to obtain a review of his disbarment, has engaged able counsel to represent him, and expended substantial sums in payment of legal expenses in an effort to seek vindication.

All doors have been closed, and your petitioner respectfully makes this final and last effort, by himself, to obtain redress from what he deeply believes to have been a miscarriage of justice.

Your petitioner is not certain that this method or the format of this petition meets with the requirements of this Court, but feels that the deep interest which this Court has shown in the preservation of individual human rights, is sufficient to insure to your petitioner, a last opportunity for redress.

Your petitioner has no intention of burdening the Court with a repetition of the constitutional questions involved, as these questions have been ably presented to the Court by counsel and are now contained in the file relating to this matter, in the possession of the Court.

Instead, your petitioner will attempt to bring before this august body, matters which he believes have not been previously presented or matters regarding which the Court may not be fully aware, hoping to make such presentation, with such control of his emotional involvement, as he is able to muster.

An examination of the record before this Court will reveal that three of the five Justices of the Appellate Division of the State of New York, before whom this motion for disbarment was pending, originally voted against disbarment (Exhibit C). The grounds for such vote are reflected in the following memorandums of Justices Christ and Pette.*

---

* Memorandums referred to above are attached hereto as Exhibits A and B.

"A man should not be disbarred except after a hearing of the charges against him. This respondent is being disbarred for perjury before the referee, but he has never been so charged with the opportunity to answer and be heard on this issue. I do not believe this should be done. *The case against this respondent is a lot weaker than I supposed it to be.* (Emphasis supplied) We must discuss before we can decide the matter. Even the subornation of perjury is heavily dependent on the testimony of the perjurers. The corroboration seems weak.

October 6, 1961
Christ (VAC)"*

"PETTE, *J.*

Under the Special Referee's decision respondent was found guilty of four offenses (Report, pp. 60-61):

(1) Failure to furnish closing statements;

(2) Dividing legal fees with one non-lawyer;

(3) Inducing two witnesses to testify falsely in the Inquiry;

and

(4) Committing perjury before the Referee through the media of the so-called 'yellow sheets'.

On offenses Nos. 1 and 2 the Referee only indicated that a punishment no more severe than censure would be in order, but that the other offenses added thereto required disbarment.

---

* "VAC": Vote against confirmation.

On No. 3 only the testimony of Dascoli and Zucker was found indicative of respondent's guilt (although nine persons were at first alleged), and the finding of guilt thereon is dependent upon the rejection of the 'yellow sheets' in their cases (Sp. Ref's. Rep., p. 57). On No. 4, it seems to me, we have a dispute over whether the 'yellow sheets' were so fairly in issue as to require respondent to verify their legitimacy. On No. 4 we have the Referee's comment that not only were the Dascoli and Zucker 'yellow sheets' fabricated but that all of respondent's 'yellow sheets' were false, though these others were not in issue, and the Referee's further comment that 'it is most singular' that respondent did not produce all his files to show that all contained such 'yellow sheets' (Report, p. 57).

Since, in effect, the severity of punishment is dependent upon the legitimacy of all the 'yellow sheets' used by respondent during the period of time in question, it is my present view that this issue should be sent back for further hearing and report to cure the void thereon in the present record. After such hearing and report, a proper finding may be made as to whether all of the 'yellow sheets' were in fact innocent or tainted, an issue on which at present there can only be conjecture since respondent was neither taxed therewith nor advised that an explanation thereon should be forthcoming."

The memorandum of Justice Christ is greatly revealing, in that it discloses a clear acknowledgment that the Justices participating in that vote, were made knowledgable with the alleged facts relating to your

petitioner, substantially more severe than those which were adduced at the trial, and which were before the Justices at the time of the motion for disbarment.

The statement in the memorandum of Justice Christ, "The case against this respondent is a lot weaker than I supposed it to be", clearly denotes that much was told to the Justices off the record; that they were made familiar with alleged facts, the product of rumor and gossip, all of which, without doubt, created an atmosphere of prejudgment.

The view of Justice Pette, as reflected in his memorandum, is equally revealing. It establishes his own uncertainty as to the propriety of the manner in which the findings regarding the guilt of your petitioner were made. In no uncertain terms, his recommendation calls for the return of the issue for further hearing and report, "to cure the void thereon in the present record".

Justice Pette acknowledges in his memorandum, that, at the time, there was only conjecture with respect to the substantial finding of guilt, and calls for an explanation, pointing out that your petitioner was neither advised nor afforded an opportunity to meet the serious charge of perjury.

The record is void of any indication as to the forces, legal concepts or logic which prevailed upon these Justices to overcome their fundamental objections, and to persuade them, finally, to vote for your petitioner's disbarment.

It is noteworthy, that these influences, whatever they may have been, were unfruitful with respect to

Justice Kleinfeld, as he remained steadfast in his disapproval of your petitioner's disbarment, the final vote being four in favor of disbarment, with Justice Kleinfeld abstaining.

It was the same Court which sanctioned the original inquiry, which heard all prehearing motions, which made the reference to an Official Referee, and it was this Court which made the final determination. Can it be assumed that their judgment ordering disbarment was based only on the facts adduced properly at the trial, or, is it more reasonable to believe that all of the preliminary information had so permeated their awareness, that their judgment was tainted with unwitting prejudice? How else can one explain the quoted statements of Justices Christ and Pette.

Your petitioner became aware of these facts in the course of examining the file before this Court and obtained photostats of the exhibits made part of this application on February 9, 1965.

The following report of Justice Brennan, who was one of the participating Justices, is greatly significant.

> "I have set forth this rather lengthy preliminary, partially to explain the long delay since the motion was made to confirm the report, to show the status of the matter, to show the respondent's vigorous contest against the disbarment proceeding, etc. The respondent has a right to use every legal means to fight the disbarment proceeding. The fact that the Referee recommended dismissal of most of the many specifications shows that he has been successful to some extent. However, the Referee still recommended

disbarment. It is my impression that, in part, the vigorous contest by the respondent and able counsel has been for the purpose of delay. While the proceeding is pending, he can still practice law—including cases involving negligence actions."

It is clear from Justice Brennan's report, that his opinion regarding your petitioner, was more deeply permeated by the rumors and alleged facts discrediting your petitioner. He concluded that the determined defense of your petitioner was motivated only by economic consideration, and he excluded any possibility that the persistent defense of your petitioner could have been the result of his earnest desire to remain a member of the Bar. and his deep convictions, that he was not guilty of wrong doing.

The fact is, that your petitioner considers his disbarment a personal tragedy, transcending all economic considerations. The great injury which your petitioner suffered, is not an economic one, but rather that which has torn away the pillars upon which he stood and stands as a human being. The effect upon his children, his family, his friends, this is the great loss which your petitioner has suffered, and this is what Justice Brennan completely lost sight of when he said "It is my impression that, in part, the vigorous contest by respondent and able counsel has been for the purpose of delay. While the proceeding is pending, he can still practice law—including cases involving negligence actions."

Such a statement is unworthy of a Judge. It reflects a prejudgment of the facts. It is the cynical

reflection of a man who has made up his mind, irrespective of the merits. Had Justice Brennan been right in his appraisal of your petitioner, the offer made by the Official Referee near the end of the hearing, for a suspension of three years, would have been gladly accepted by your petitioner. The fact remains that your petitioner was firm in his conviction, that the facts well justified his innocence and he refused such an offer.

It is respectfully called to the Court's attention, that the file which was before this Court in connection with the original application, contained in it, letters from the United States Treasury Department, Chief of the Intelligence Division, and a letter from the Acting United States Attorney, Wickersham. The first letter mentioned, indicated that your petitioner was undergoing a special investigation by the Treasury Department of the United States, and the second letter referred to, requested your petitioner's file for the purpose of an examination to be conducted by the Federal Bureau of Investigation.

Neither of these letters had anything to do with the hearings or with the disbarment proceedings or with the guilt or innocence of your petitioner in connection with same, nor were they a necessary part of the record on appeal. Why, then, were these letters inserted in the file and permitted to remain available for consideration in connection with appeals of your petitioner's disbarment? The inferences generated by these two letters are obvious and clear. They served to brand your petitioner as a prime suspect of an illicit and surreptitious enterprise.

It is to be noted that the Appellate Division, which subsequently ruled on your petitioner's disbarment, authorized, by an order, ex parte (Exhibit D), the surrendering to the Federal Bureau of Investigation, of all data and information contained in your petitioner's file. It is important to observe that this was done before the same Court ordered your petitioner's disbarment. Could it be said then, that they were unprejudiced or devoid of prejudgment at the time they rendered their disbarment decision?

It is most significant that your petitioner has never been indicted for any crime by the State of New York or by the United States Government, despite the thorough and painstaking inquiries by many Governmental Agencies, and in spite of the fact that all of your petitioner's books and records were laid bare to these Agencies to search as they pleased and to incriminate as they wished.

The lengthy hearings, the parade of witnesses, the availability of your petitioner's records, the deprivation of your petitioner from preparing a proper defense, failed to adduce a finding substantiating any of the charges contained in the bill of particulars served upon your petitioner.

Instead, the disbarment of your petitioner was predicated upon a charge arising out of the hearing itself, consisting of certain yellow sheets alleged to have been fabricated by your petitioner, never before raised by those preparing the case against your petitioner, nor did this finding of fabrication result in any criminal charge against your petitioner.

Certainly, elementary Justice required that the issues raised by these alleged fabricated yellow sheets should have been inquired into at a hearing, to afford your petitioner the opportunity to meet the accusation.

Your petitioner earnestly pleads with this Court to reconsider its previous denial and to grant a writ of certiorari herein, so that the true issues involved may be heard by this Court in full debate, and thus, a substantial wrong, which your petitioner feels has been perpetrated, can be rectified, consistent with the proper administration of Justice, and the preservation of individual human rights.

Respectfully submitted,

DAVID A. GOLDNER
Pro Se

Certificate

I hereby certify that the foregoing application for rehearing is filed in good faith, and not for purposes of delay.

Dated: New York, N.Y.
February 11, 1965

DAVID A. GOLDNER

Exhibit A

(PHOTOPRINT)

[For convenience of Court and Counsel this Document is bound in on the opposite page]

Exhibit A

PHOTOPRINT)

Court and Counsel this Document is on the opposite page]

12

In the Matter of the Petition of Edward S. Silver, District Attorney of the County of Kings, pursuant to section 90 of the Judiciary Law, petitioner, against David A. Goldner, an Attorney and Counsellor-at-law, respondent.

BRENNAN, J. Motion to confirm report of Hon. J. Irwin Shapiro granted and respondent disbarred. September 29, 1961

Christ, J. U.S.C. (Mo) OCT 6 1961

I think should not be disbarred except after a hearing of the charges against him. The respondent is being disbarred for perjury before the referee, but he has never been so charged with the opportunity to answer and be heard on the issue. I do not believe that this should be done. The case against this respondent is a lot weaker than I supposed it to be. We must discuss it before we can decide the matter. Even the subornation of perjury is largely dependent on the testimony of the perjurers, the corroboration seems weak.

Exhibit B

PETTE, *J.*

Under the Special Referee's decision respondent was found guilty of four offenses (Report, pp. 60-61):

(1) Failure to furnish closing statements;

(2) Dividing legal fees with one non-lawyer;

(3) Inducing two witnesses to testify false in the Inquiry;

and

(4) Committing perjury before the Referee through the media of the so-called "yellow sheets".

On offenses Nos. 1 and 2 the Referee only indicated that a punishment no more severe than censure would be in order, but that the other offenses added thereto required disbarment.

On No. 3 only the testimony of Dascoli and Zucker was found indicative of respondent's guilt (although nine persons were at first alleged), and the finding of guilt thereon is dependent upon the rejection of the "yellow sheets" in their cases (Sp. Ref's. Rep., p. 57). On No. 4, it seems to me, we have a dispute over whether the "yellow sheets" were so fairly in issue as to require respondent to verify their legitimacy. On No. 4 we have the Referee's comment that not only were the Dascoli and Zucker "yellow sheets" fabricated but that all of respondent's "yellow sheets" were false, though these others were not in issue, and the Referee's further comment that "it is most singular" that respondent did not produce all his

files to show that all contained such "yellow sheets" (Report, p. 57).

Since, in effect, the severity of punishment is dependent upon the legitimacy of all the "yellow sheets" used by respondent during the period of time in question, it is my present view that this issue should be sent back for further hearing and report to cure the void thereon in the present record. After such hearing and report, a proper finding may be made as to whether all of the "yellow sheets" were in fact innocent or tainted, an issue on which at present there can only be conjecture since respondent was neither taxed therewith nor advised that an explanation thereon should be forthcoming.

Exhibit C

In the Matter of the Petition of Edward S. Silver, District Attorney of the County of Kings, pursuant to section 90 of the Judiciary Law, petitioner, against David A. Goldner, an Attorney and Counsellor-at-law, respondent.

BRENNAN, J.	Motion to confirm report of report of Hon. J. Irwin Shapiro granted and respondent disbarred.	September 29, 1961

Beldock, Acting P.J. Concur.

Kleinfeld, J. V.A.C.

Christ, J. V.A.C. (see memorandum attached)

Pette, J. V.A.C. (see Memo. attached)

Exhibit D

SUPREME COURT: APPELLATE DIVISION

SECOND JUDICIAL DEPARTMENT

In the Matter of the application, pursuant to the Judiciary Law (Section 90, subdivision 10), for permission to examine the records of the judicial inquiry, investigation and proceeding relating to the conduct of

DAVID A. GOLDNER,

an Attorney-at-Law.

Good cause having been shown by Cornelius W. Wickersham, Jr., United States Attorney for the Eastern District of New York, it is hereby:

ORDERED, pursuant to the Judiciary Law (Section 90, subdivision 10), that the Clerk of this court, that the District Attorney of Kings County, and that the Judicial Inquiry Into the Conduct of Attorneys and Counsellors at Law in Kings County, be and they each are hereby authorized to divulge to the said United States Attorney, to the Federal Bureau of Investigation and to any other governmental agency, all the records of the judicial inquiry, investigation and proceeding, which are in the custody or control of said Clerk, District Attorney and Judicial Inquiry, relat-

ing to the conduct of David A. Goldner, an attorney-at-law.

Dated, Brooklyn, New York, August 2, 1960.

GERALD NOLAN
Gerald Nolan

GEORGE J. BELDOCK
George J. Beldock

HENRY L. UGHETTA
Henry L. Ughetta

MARCUS G. CHRIST
Marcus G. Christ

NICHOLAS M. PETTE
Nicholas M. Pette

ARTHUR D. BRENNAN,
Arthur D. Brennan

Justices of the Appellate Division of the Supreme Court, Second Judicial Department.